

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX AND PURCHASERS' USE TAX – ACTUAL TAX FIGURES SUPPLANT TAX ESTIMATES – Upon examination, post-hearing actual tax figures will be accepted to determine one's tax liability in lieu of tax estimates, if the same are properly documented.

FINAL DECISION

The Director of the Field Auditing Division of the Commissioner's Office issued a consumers' sales and service tax assessment against the Petitioner

This assessment was for the period of January 1, 2000 through December 31, 2002, for tax, interest, through December 31, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner on January 29, 2003.

Also, the Commissioner issued a purchasers' use tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 15A of the West Virginia Code, for the period of January 1, 2000 through December 31, 2002, for tax, interest, through December 31, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner on January 29, 2003.

Thereafter, by mail, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment.

During Petitioner's presentation, the administrative law judge ruled that the record would be kept open through May 15, 2003 so that Petitioner could transport his tax records to the Division for further examination.

FINDINGS OF FACT

1. Petitioner is primarily engaged in the business of constructing sun roofs, decks and installing hot tubs.
2. By his own testimony Petitioner collected consumers' sales and service tax during the audit period and kept same.
3. Petitioner admitted that he had not paid use tax as required because he did not have the funds.

DISCUSSION

The sole issue is whether the Petitioner will be allowed to submit actual tax figures post hearing to supplant the estimates arrived at by the tax auditor.

Although Petitioner has admitted under oath that he collected consumers' sales and service tax and kept same in order to conduct business, that fact alone does not summarily prohibit it from supplying precise tax figures post hearing in lieu of the estimates previously calculated by the tax auditor.

In this matter, said tax figures have been reviewed and are now accepted and thus will supplant the previously determined estimates.

CONCLUSION(S) OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e).
2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of whether its actual tax should be used in lieu of tax estimates.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers' sales and service tax assessment issued against the Petitioner for the period of January 1, 2000 through December 31, 2002, should be and is hereby **MODIFIED** in accordance with the above Conclusion(s) of Law for tax, interest, on the revised tax, updated through June 30, 2003, and additions to tax, for a total revised liability.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the purchasers' use tax assessment issued against the Petitioner for the period of January 1, 2000 through December 31, 2002, should be and is hereby **MODIFIED** in accordance with the above Conclusion(s) of Law for tax, interest, on the revised tax, updated through June 30, 2003, and additions to tax, for a total revised liability.